

Report No. 16.

[To accompany bill H. R. No. 711.]

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HOUSE OF REPRESENTATIVES.

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NEW MEXICO.

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JANUARY 3, 1849.

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Mr. PILSBURY, from the Committee on Territories, submitted the following as the views of the minority of said committee:

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REPORT AND PROTEST

OF THE MINORITY OF THE COMMITTEE ON TERRITORIES AGAINST THE  
DISMEMBERMENT OF TEXAS.

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A majority of the Committee on Territories having reported a bill to the House, organizing into a Territory of the United States that portion of New Mexico lying east of the Rio Grande, and heretofore, as now, claimed by Texas, the minority of the committee deem it a solemn duty to lay before the House, and the people of the United States, the facts and circumstances upon which the claim of the State of Texas is founded.

The summary made by which the majority of the Committee on Territories assume to appropriate to the United States about half of the territory of a sovereign State, is as novel as it is pre-eminently unjust.

Were there only a shadow of claim, a decent regard for the honest opinions of a State, *co-equally sovereign* with the general government, would seem to require a course less summary, and more in accordance with the relations in which they stand to each other. When, however, all the facts and circumstances connected with the *revolution* by which Texas was separated from Mexico, and running through a period of more than ten years, are taken into view,

the impropriety of this summary proceeding becomes more glaringly apparent.

Before referring to some of the important events of the revolution, upon which rests the claim of Texas, and up to the period when the government of the United States *sought* to annex Texas as a State of the Union, it cannot be inappropriate to quote some of the reasons and pledges made to Texas, during the negotiation, to induce her to acquiesce in the resolutions by which she finally became a State. Like other treaties between nations, the treaty with Texas required the fulfillment, by co-ordinate branches of the federal government, *in good faith*, of the promises and pledges which influenced the acceptance of the resolutions, when not repugnant to international law or natural justice.

These pledges form a part of the contract, and the nation by which they are made and violated cannot fail to be obnoxious to the brand of dishonor.

The following extracts exhibit the spirit in which the United States induced Texas to accept the resolutions of annexation:

*Mr. Buchanan to Mr. Slidell.*

"Besides, it is greatly to be desired that our boundary with Mexico should now be established in such a manner as to preclude all future difficulties and disputes between the two republics. A great portion of New Mexico being on this side of the Rio Grande, and included within the limits already claimed by Texas, it may hereafter, should it remain a Mexican province, become a subject of dispute, and a source of bad feeling between those who, I trust, are destined in future to be always friends."

*Extract of a letter from Mr. Calhoun to Mr. Donelson.*

"But it is deemed by the President of great importance that the resolution should be adopted by the government of Texas without amendment, so as to avoid the hazards and contingencies incident to delay; and you are, accordingly, instructed to use your best exertions to effect this object. Should you fail in this, you will next endeavor to induce the Congress of Texas to substitute, in place of amendments, separate and distinct propositions, expressive of the views of what the provisions of the resolution ought to be, accompanied by a strong address, setting forth their reasons at length, and expressing their reliance on the justice of the government of the United States for their adoption. If both fail, it will then remain for the Congress of Texas to amend the resolution as above suggested."

*Extract of a letter from Mr. Buchanan to Mr. Donelson.*

"Nothing can prevent this happy result but the determination of Texas to change and modify the conditions presented by these resolutions; and you cannot too earnestly warn the government of

that republic against the unhappy consequences which may flow from such a policy. Should any of these conditions appear to be unreasonable, she may rely with confidence upon the well known justice and liberality of her sister States to change or modify them after she shall have been restored to the bosom of our republican family. The great object now to be accomplished—that which far transcends all other objects in importance—is her prompt admission into the Union. This once accomplished, all other subordinate questions can be easily and satisfactorily arranged between the parties. The President confidently trusts that the government of Texas may take this view of the subject, and not suffer the re-union between the two countries to be delayed or defeated by the interposition of minor questions, which, in the natural course of events, will settle themselves hereafter.”

*From the President's message, December 2, 1845.*

“Towards Texas, I do not doubt that a liberal spirit will actuate Congress in all that concerns her interest and prosperity, and that she will never have cause to regret that she has united her lone star to our glorious constellation.”

Extracts from the correspondence of the Secretary of State and the minister, Mr. Donelson, during the negotiation for annexation, could be multiplied; but the foregoing exhibit the spirit in which the annexation resolutions were pressed upon the attention of the government of Texas, and which finally led Texas to accede to the terms of the resolutions.

Not the slightest intimation was ever given to Texas that, in any event, the government of the United States would ever become a rival claimant for any portion of the disputed boundary.

The claim of Texas is founded upon the *revolution* which Mexico forced upon her.

The citizens of the United States were invited to settle in Texas by Mexico, mainly for the purpose of erecting a barrier between her own settlements and several warlike tribes of Indians, who for several years had depredated upon her. The then government of Mexico was a confederation of States, nearly similar to that of the United States.

Mexico also gave liberal grants of land and guaranteed full political rights to all who accepted her proposals and became citizens of that *republic*. Texas became a State and remained peaceable under the constitution of '24, and until General Santa Anna overthrew the republican institutions of his country, and established a military despotism in their stead. In furtherance of his designs, and in order to consolidate a monarchy in place of the republic, he caused a decree to be passed to *disarm* the inhabitants of Texas.

This produced intense excitement, and a convention met at San Felipe in October, 1835. In the mean time, General Cos, with an army, crossed the Rio Grande, and established himself in San Antonio, for the purpose of enforcing the tyrannical decree of Santa

Anna. A conflict ensued; the Texians were victorious; Cos surrendered, and among the articles of capitulation was the following:

"1st. That General Cos and his officers retire, with their arms and private property, into the interior of the republic, under parole of honor that they will not in any way oppose the establishment of the federal constitution of 1824."

Never after this capitulation did the Mexican government occupy, *permanently*, the territory between the Nueces and the Rio Grande, nor had they any fortifications or other military defences on the east side of the lower Rio Grande. Whenever forays were made, the Mexicans were in every case driven back to the west side of the river, and civil and military jurisdiction was exercised by the government of Texas.

The convention at Washington, upon the Brassos, declared the independence of Texas. Among its members were delegates from that portion of the territory lying *between the Nueces and the Rio Grande*. The first blood shed in the revolution flowed upon the same soil.

Santa Anna then invaded Texas with a numerous and well appointed army. He was met on the ever memorable battle field of San Jacinto, was conquered and made prisoner. Notwithstanding more than 5,000 troops remained under Filosola, all hope of conquering the country was abandoned, and to save the remaining portion of the army, a negotiation was entered into with Santa Anna, which led to a treaty, of which the following is an article.

Article 5th. "That the following be and the same are hereby established and made the lines of demarcation between the two republics of Mexico and Texas, to wit: the line shall commence at the estuary or mouth of the Rio Grande, on the western bank thereof, and shall pursue the same bank up the said river to the point where the river assumes the name of the Rio Bravo del Norte, from which point it shall proceed on the said western bank to the head waters or source of said river, it being understood that the terms Rio Grande and Rio Bravo del Norte apply to and designate one and the same stream. From the source of said river, the principal head branch being taken to ascertain that source, a due north line shall be run until it shall intersect the boundary line established and described in the treaty negotiated by and between the government of Spain and that of the United States of the north; which line was subsequently transferred to and adopted in the treaty of limits made between the government of Mexico and that of the United States; and from this point of intersection the line shall be the same as was made and established in and by the several treaties above mentioned, to continue to the mouth or outlet of the Sabine river, and from thence to the Gulf of Mexico."

*To release the remains of the army of invasion, the above boundary was conceded.* It may be said that Santa Anna was a prisoner. The treaty which he made was, however, ratified by Filosola, who was free, and Mexico was substantially benefitted by it. This treaty was carried out in good faith by Texas. That the Mexican government failed to ratify it, after accepting the benefits it conferred on her, does not alter the equitable claim to its fulfillment.

*Extract from despatch of Santa Anna, after the battle of Buena Vista.*

"From the impression we had made on the enemy, he did not appear before us for three days; the bearer of a flag of truce, however, arrived with a proposition from General Taylor, for an exchange of prisoners, and for our sending for the wounded who had remained on the field. He also expressed to me the desire which the Americans felt for the re-establishment of peace. I replied, in order that he might say the same to his general, that we sustained the most sacred of causes—the defence of our territory, and the preservation of our nationality and rights; that we were not the aggressors, and that our government had never offended that of the United States. I observed that we could say nothing of peace while the Americans were *on this side* of the Rio Bravo, or occupied any part of the Mexican territory, or blockaded our ports; and that we were resolved to perish or vindicate our rights; that fortune might not always be favorable to the enemy, and the experience of the 22d and 23d should convince them that it could change."

If anything more was necessary to establish the claim of Texas to the boundary in question, it is found in the acknowledgment of the Mexican commissioners, who concluded the late treaty of peace with the United States:

"The intention (say the commissioners) of making the Bravo a limit, has been announced by the clearest signs for the last twelve years; and it would have been impossible at the present day to change it. *After the defeat of San Jacinto, in April 1836, that was the territory which we stipulated to evacuate, and which we accordingly did evacuate, by falling back on Matamoras. In this place was afterwards stationed what was called the army of the north; and though it is true that expeditions and incursions have been made there even as far as Bexar, we have very soon retreated, leaving the intermediate space absolutely free. In this state General Taylor found it, when, in the early part of last year, he entered there by order of his government.*"

The confessions of Mexicans of consideration and high official rank, corroborate the history of the claim of Texas.

The law passed at the first session of the legislature of Texas, *establishing the boundary from the mouth to the source of the Rio Grande*, originated with the *history* of the revolution. Had the law been the sole reliance of Texas, and unaccompanied with the consequences flowing out of the revolution, then, indeed, its authority might have been questioned by Mexico; but so far as relates to the United States, the law alone would have barred any pretensions she might have put forth. She knew of our claim, and acknowledged it. *It was recognized in the resolutions of annexation, and accepted by the United States in the constitution of the State of Texas.* Not only the law, but all the acts of the government which were ratified by the people of Texas, steadily and



perseveringly clung to this boundary. After the Senate of the United States had rejected annexation, and all hopes of becoming a State of the Union were abandoned, Gen. Houston, then president of Texas, gave a written order to Hon. Anson Jones, Secretary of State, to instruct the Texas minister, resident at the court of St. James, to propose a commercial treaty with the British government, providing for a peace with Mexico; but the boundary *from the mouth to the source of the Rio Grande* was to be a "*sine qua non*."

When, within a year afterward, suddenly, and entirely unexpectedly in Texas, the hopes of annexation were revived, and its success almost certain, President Jones, the successor of General Houston, and his cabinet, sent the "projet" of a treaty to Mexico, *leaving the boundary to arbitration*, and containing the condition that Texas should *never* become annexed to the United States, but remain independent. This treaty was ratified by the Mexican authorities; and "*with independence and peace with all the world*," was presented before the people of Texas simultaneously "*annexation and all the contingencies*." Between these two issues the people were to choose.

The senate of Texas *unanimously rejected the Mexican treaty*, and the people, *almost unanimously*, accepted annexation and "*its contingencies*." Few, if any, in Texas at that time thought that one of the contingencies appertaining to annexation would be an attempt on the part of any branch of the government of the United States to dismember the State of Texas, and appropriate to the use of the federal government a large portion of territory claimed by, and equitably, constitutionally, and legally belonging to the State of Texas.

It is a notorious fact, apparent from the journals of proceedings in both branches of the federal legislature, and from numberless other sources, that the scheme of annexation was greatly embarrassed by the question, whether the United States should take a cession of the public domain of Texas, and, in consideration, assume the payment of her public debt, or leave her debt in her own hands, and also her territory, as the means of payment.

It was considered by many that, as the United States deprived the republic of Texas of the resource of impost duties, they were bound to assume her debt. But it was thought by others that the large amount of territory secured by annexation to Texas would be an equivalent for the loss of her impost system, and would constitute ample means of discharging all her debts.

The latter views ultimately prevailed in the Congress of the United States. Texas retained her debt and her public domain, and no one can be found to deny that in estimating the value of the security offered her by annexation, in reference to the maintaining her title to her public domain, and considering the means she would have left to discharge her liabilities, after yielding her impost system to the United States, the entire domain east of the Rio Grande was had in contemplation; nor will any one dispute the proposition, that if the United States, as at one time was intended, had assumed the debt of Texas, and received from her, in

consideration thereof, a cession of her unappropriated territory, they would have regarded such cession as covering the whole territory east of the Rio Grande. And Texas would never have had the hardihood to question the fairness of the claim.

She therefore demands no more in relation to territory than the United States would and ought to have insisted upon in case the resolutions which ceded her territory to the United States had been adopted by Congress in lieu of those that were adopted.

The authority of the United States in reference to the question of boundary between Texas and Mexico was derived from the provisions of the resolutions of admission into the federal union, and conformable to a power vested in the federal government by the constitution. But what is this power? It is a power to act by *treaty* and not by *legislation*. We deny the right of Congress to divide or reduce the territory of a sovereign State without its consent. The constitution is express upon this subject. Whatever power the United States may possess in cases of this sort rests with its *treaty making* authorities.

The treaty making authority is applicable only to questions to which foreign States are parties. The present question does not concern any foreign State, or involve any foreign relation whatever. It is a question between the Union and one of the sovereign States of the Union, and while the treaty making power is, from its very nature, wholly inapplicable to it, the constitution has invested the Congress, the legislature of the Union, with no power to legislate upon the subject. Nor do the resolutions of annexation concede such a power, even were it legitimate to look to such a source for the derivation and origin of legislative authority.

If the Rio Bravo be not the western boundary of Texas, then she has no western boundary, and any one imaginable line might be indicated as well as any other. And if Congress may assume to exercise a power conceded and belonging to the treaty making authorities of the Union, Texas is liable to be reduced to the smallest conceivable dimensions. It is in vain to say that Mexico refused to treat; for though reluctantly, yet in the end she did in fact treat. And the late treaty by which she ceded California and New Mexico to the United States ought to have designated and settled the boundary of Texas. And the fact that the United States omitted to prescribe a boundary in the only way in which they were authorized to do, shows conclusively that they meant to acquiesce in the one claimed by Texas. And Congress, the law making authority, cannot assume to say what the treaty making authority ought to have done, and to found a claim to reversionary power upon the imputed neglect, oversight, or delinquency of the treaty making authority.

That the late treaty did not disturb the boundary of the Rio Grande, did not prescribe any other, shows that the Executive and Senate meant to acquiesce in that boundary; and the resolutions of annexation fully commit Congress to the same boundary, should the treaty making authority agree upon it. In not prescribing a different boundary, the Executive and Senate practised no bad faith

towards the legislature of the Union. They neglected nothing they were commanded to do, but only omitted what they were permitted to do or not to do upon their own free discretion. The only ground, therefore, upon which Congress could insist upon a different boundary, would be that the treaty making authorities intended that a different one should be fixed upon. But where is the proof that a different one was intended? Can it be found in the fact that the one claimed by Texas was not disturbed?

The controversy in relation to boundary was not between Texas and this Union, but between Texas and the republic of Mexico. And if Mexico refused to treat, the forfeiture of claim should fall upon her, and not upon Texas, who stood at all times submissive to the treaty making authority. Contrary reasoning would be strange indeed!

In submitting the question of boundary to the United States, Texas hoped to avail herself of the friendship and advocacy of the United States. She set a high value upon the advantage of having the moral force of so powerful a government in favor of her pretensions and claims. But if this friendship and advocacy are to be displaced and substituted by adverse and rival pretensions—if this moral force is to be brought to bear against her, if she has only exchanged a controversy with Mexico for one with the United States, then it would be better for her had she kept her destinies in her own hands, and stood up single-handed against her former adversary.

The power conceded by Texas to the United States, in acceding to the resolutions of annexation, was not a power to institute and ordain arbitrarily the limits and extent of her territory, as though she had been a new State about to be formed and admitted into the Union, having no determinate claim to any definite limits or extent of territory. Instead of such, it was a mere *judicial* power to ascertain a boundary previously existing, and to which Texas laid a definitive claim.

The power did not cover the whole matter of boundary and territorial compass; if it did, the United States might claim to unsettle every boundary of the State—east, west, north or south, and reduce it to any shape or size they might please; they might cut off a portion of her territory as well south or east as west or north.

The subject of boundary, as a substantive matter, was not meant to be placed under the jurisdiction of the United States; but only were "*questions of boundary*" submitted to their arbitrement.

There was pending at the time of annexation a question of boundary between Texas and Mexico, and this *question* relating to boundary was the whole foundation and final cause of the authority vested in the United States; and it was the solemn duty of the United States, by their treaty making authorities, to adjudge and determine this question in a manner as favorable to Texas as Mexico might, by all the lawful means of negotiation, be induced to acquiesce in.

But this *question* ceasing to exist, all authority dependant upon its existence must also cease.



The late treaty of peace between the United States and Mexico put an end to every question or controversy, and in doing so put an end to the authority conceded to the United States in the resolutions of annexation.

But, what is the claim now set up on behalf of Congress? It is this: the treaty making authorities of the Union, to whom was entrusted a controversy touching boundary between a foreign nation and one of the States of the Union, having concluded that controversy in a manner not satisfactory to the federal legislature, that legislature may lawfully rectify, by assuming as a proper subject of legislative jurisdiction, the determination of the limits and extent of a sovereign State.

Whence such a power? If the controversy between Texas and Mexico still subsisted, no one would imagine that Congress was competent to take cognizance of it. How, then, can it be pretended that the resolutions of annexation intended to commit that controversy to Congress, and not to the treaty making power? It seems, therefore, that, by confounding a "question of boundary" between a foreign nation and one of the States of the Union with the matter of boundary and limits as subjects of internal domestic legislation, a new authority is sought to be derived, never thought of in the resolutions of annexation; and, furthermore, that that authority is asserted in favor of a department of the government equally unthought of in those resolutions.

Suppose that, at the time of annexation, a controversy had existed between Texas and Mexico not relative to territory, but relative to the navigation of some river separating the two republics, and that the resolutions of annexation had authorized the United States to determine all "questions of navigation," can it be pretended that, under such a provision, Congress would have legislative jurisdiction over the whole matter of internal navigation, as a substantive foundation of power?

For the reasons set forth in the foregoing report, the minority solemnly protest against the action of the House of Representatives, or the Congress of the United States, touching the territory claimed by the State of Texas.

T. PILSBURY,

*In behalf of the Minority of the Committee.*